



DEPARTMENT OF LAW  
OFFICE OF THE  
**Attorney General**  
STATE CAPITOL  
Phoenix, Arizona 85007

August 20, 1976

76-268  
R76-301  
BRUCE E. BABBITT  
ATTORNEY GENERAL

Mr. George B. Jordan, Director  
Division of Emergency Services  
3001 West Indian School Road, Suite  
Phoenix, Arizona 85017

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Dear Mr. Jordan:

This is in response to your letter of June 23, 1976 wherein you request our opinion as to the validity of your procedure in processing requests for waivers from local governments and ask the following:

- a. Should the request be signed by the head of the governing body, i.e., the Chairman of the Board of Supervisors or the Mayor, as appropriate?
- b. In the case of Phoenix, with its Council-Manager form of government, would the City Manager be a recognized authority to sign requests for waiver?
- c. If the response to "b" above is affirmative, may the City Manager delegate his authority?

As noted in A.R.S. §§ 34-410(3) and 34-441.D, the "governing bodies" of counties, municipalities, or other political subdivisions of the state shall be responsible for making application for waiver of public fallout shelter requirements. The Division of Emergency Services has adopted rules to govern waiver applications. A.C.R.R. § R8-2-22.B(2)(c) further provides that such requests shall be signed by "the head of the responsible agency." In light of these provisions, there can be little doubt that waiver requests are to be signed by the head of the appropriate governing body.

Determining the identity of the appropriate governing body for the purposes of §§ 34-441 et seq. may be difficult.



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In the case of the City of Phoenix, the city charter at Ch. 3, § 1, states:

The municipal government provided for in this chapter shall be known as the "Council-Manager" government. All powers of the City shall be vested in a council to consist of a mayor and six (6) other members to be elected as provided by law by the qualified electors of the City of Phoenix.

. . . .

Inasmuch as the council possesses all powers of the City, it is a logical conclusion that the council is the proper "governing body" of the City of Phoenix, and thus should make the waiver requests.

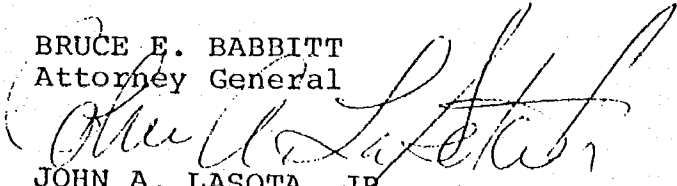
The recognized authority to sign these requests is the "head" of the governing body. Again, turning to the Phoenix City Charter, Ch. 5, § 3, provides:

The mayor shall be recognized as the official head of the city for the purpose of service of civil process upon the city and instituting any action or proceeding at law or equity for and in behalf of the city, and appearing in any manner before the courts on behalf of the city; he shall be recognized by the governor and other State officials as the chief and official head of the city.  
[Emphasis added.]

This language and other charter provisions establishing the Mayor as presiding member at council meetings form the basis for concluding that the Mayor of Phoenix is the proper person to sign waiver requests. The City Manager, though the chief administrative officer of the City, is not the head of the City's governing body, and hence is not qualified to sign requests under the statutes cited above.

Sincerely,

BRUCE E. BABBITT  
Attorney General

  
JOHN A. LASOTA, JR.  
Chief Assistant Attorney General

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